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HOUSE CS FOR CS FOR SENATE BILL NO. 154(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/4/05

Referred: Finance

Sponsor(s): SENATOR THERRIAULT

REPRESENTATIVES Ramras, Kelly, Hawker, Chenault, Holm, Stoltze, Croft

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the jurisdiction for proceedings relating to delinquent minors and to**
2 **telephonic and televised participation in those proceedings; amending Rules 2, 3, 4, 8,**
3 **12, 13, 14, 15, 16, 21, 22, 23, 24.1, and 25, Alaska Delinquency Rules; and providing for**
4 **an effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 47.12.020 is amended by adding a new subsection to read:

7 (b) Except as otherwise provided in this chapter, proceedings relating to a
8 person who is 18 years of age or over are governed by this chapter if the person is
9 alleged to have committed a violation of the criminal law of the state or a municipality
10 of the state, the violation occurred when the person was under 18 years of age, and the
11 period of limitation under AS 12.10 has not expired.

12 * **Sec. 2.** AS 47.12 is amended by adding new sections to read:

13 **Sec. 47.12.022. Applicability; inclusion of certain persons as minors.**

14 Except as provided in AS 47.12.025, the provisions of this chapter apply to a person

1 who is 18 years of age or older and who is subject to the jurisdiction of this chapter
 2 due solely to AS 47.12.020(b). To implement AS 47.12.020(b) and this section, the
 3 term "minor" as used in this chapter includes a person described in this section.

4 **Sec. 47.12.025. Special provisions for certain persons considered to be**
 5 **minors.** (a) Notwithstanding any other provision of law, the following special
 6 provisions apply to a person who is subject to the jurisdiction of this chapter due
 7 solely to AS 47.12.020(b):

8 (1) a petition filed under AS 47.12.040(b) must be styled as follows:
 9 "In the matter of, a person under the jurisdiction of this
 10 chapter under AS 47.12.020(b)"; the petition may not state the name of a parent,
 11 guardian, or other person;

12 (2) notice of an investigation, adjustment, hearing, or other procedure
 13 under this chapter to a parent, guardian, or foster parent is not required;

14 (3) participation by a parent, guardian, or foster parent in any part of
 15 the investigation, adjustment, hearing, or other procedure under this chapter is not
 16 required;

17 (4) agreement or consent by a parent or guardian to the terms and
 18 conditions of an informal adjustment under AS 47.12.060 is not required;

19 (5) an opportunity for a foster parent to be heard before informal
 20 adjustment under AS 47.12.060 is not required;

21 (6) the presence of a parent or guardian is not required, and the person
 22 does not have a right to have a parent or guardian present at an interview conducted
 23 during an investigation under this chapter;

24 (7) after a petition is filed and after further investigation that the court
 25 directs, if the person has not appeared voluntarily for proceedings under this chapter,
 26 the court may issue a summons or an arrest warrant for the person;

27 (8) a person who is taken into custody under this chapter may, in the
 28 discretion of the court and upon written promise to appear in court at the time
 29 specified by the court, be released; if not released, the person shall be detained under
 30 the provisions of (b) of this section;

31 (9) consent of a parent or guardian to waiver of the right to appointed

1 counsel or a guardian ad litem under AS 47.12.090 is not required;

2 (10) the appointment of a guardian ad litem under AS 47.12.090 is not
3 required; the court may appoint a guardian ad litem under AS 47.12.090 only if special
4 circumstances exist concerning the mental or physical capacity of the person who is
5 named in the petition under (1) of this section;

6 (11) an order under AS 47.12.120(b) to release the person to a parent,
7 guardian, or other person must be with the consent of the parent, guardian, or other
8 person; a parent, guardian, or other person who consents does not assume any of the
9 responsibilities described in AS 47.12.150 or retain any residual rights or
10 responsibilities described in AS 47.12.150;

11 (12) a person released under AS 47.12.120(c) shall be released without
12 conditions;

13 (13) a parent, guardian, or custodian may not apply for a review under
14 AS 47.12.120(d); notice to a parent, guardian, custodian, or foster parent of a review
15 under AS 47.12.120(a) is not required; a parent, guardian, custodian, or foster parent
16 does not have a right to be heard at the review under AS 47.12.120(d);

17 (14) the person's parent or guardian may not file an appeal under
18 AS 47.12.120(f);

19 (15) notice of the predisposition report under AS 47.12.130(b) to the
20 person's parent or guardian is not required;

21 (16) unless part of a conditional release plan agreed to by a parent or
22 guardian, a parent or guardian of the person may not be ordered to participate in or pay
23 for treatment under AS 47.12.155(b)(1), (c), or (d) or to notify the department if the
24 person violates a term or condition of a court order under AS 47.12.155(b)(2);

25 (17) an application to extend jurisdiction under AS 47.12.160(a) may
26 not be made by a parent or guardian;

27 (18) the court may not order the parent of the person to pay for
28 maintenance or care of the person under AS 47.12.230;

29 (19) the name of a parent or guardian of the person is not required to
30 be disclosed in connection with the filing of a petition or informal adjustment under
31 AS 47.12.315.

(b) At a hearing under AS 47.12.250(c) regarding a person who is subject to the jurisdiction of this chapter due solely to AS 47.12.020(b), if the court finds that probable cause exists, the court shall determine whether the person should be detained pending the hearing on the petition or released. The court may either order the person detained as provided in (c) of this section or released under the provisions of AS 12.30 as if the provisions of AS 12.30 were to apply to proceedings under this chapter. If the court finds no probable cause, the court shall order the person released and close the proceeding.

(c) If a person who is subject to the jurisdiction of this chapter due solely to AS 47.12.020(b) has been arrested by a peace officer or a probation officer under AS 47.12.245, detained under AS 47.12.250, or committed to the custody or supervision of the department under AS 47.12.120(b) or 47.12.240, the department, after consulting the peace officer or probation officer if appropriate, shall make arrangements for the detention, placement, or supervision of the person. In the discretion of the department, the person may be detained or placed in a juvenile facility or in an adult correctional facility.

* **Sec. 3.** AS 47.12.065(a) is amended to read:

(a) The department or the entity selected by it may refer to the appropriate district attorney the circumstances involving a minor who is subject to the provisions of this section because the minor is alleged to have violated a criminal law of the state. Except as provided in (d) of this section, the [THE] department or the entity selected by it may make the referral if the minor was 16 years of age or older at the time of the offense, and the offense is

(1) a felony that is a crime against a person and the minor has previously been adjudicated a delinquent under the laws of this state or substantially similar laws of another jurisdiction for a felony offense that is a crime against a person; or

(2) sexual abuse of a minor in the second degree.

* **Sec. 4.** AS 47.12.065 is amended by adding a new subsection to read:

(d) The department or the entity selected by it may refer to the appropriate district attorney a person who is subject to the jurisdiction of this chapter under

AS 47.12.020(b) and who is alleged to have committed a felony or other offense. If the district attorney elects to seek imposition of a dual sentence in the matter, the district attorney shall file notice of that election. If the alleged crime is a misdemeanor, the district attorney shall file a delinquency petition. If the alleged crime is a felony, the district attorney shall follow the procedure set out in (b) of this section.

* **Sec. 5.** AS 47.12.160(a) is amended to read:

(a) **Except as provided in (g) of this section, the** [THE] court retains jurisdiction over the case and may at any time stay execution, modify, set aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise of its power of protection over the minor and for the minor's best interest, for a period of time not to exceed the maximum period otherwise permitted by law or in any event extend past the day the minor becomes 19, unless sooner discharged by the court, except that the department may apply for and the court may grant an additional **one-year** [ONE- YEAR] period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. An application for any of these purposes may be made by the parent, guardian, or custodian acting in behalf of the minor, or the court may, on its own motion, and after reasonable notice to interested parties and the appropriate department, take action that it considers appropriate.

* **Sec. 6.** AS 47.12.160(d) is amended to read:

(d) The department, **or the district attorney in a matter subject to the jurisdiction of this chapter under AS 47.12.020(b),** may petition the court for imposition of sentence pronounced under AS 47.12.120(j)(2) if the offender is still subject to the jurisdiction of the court and if the offender, after pronouncement of sentence under AS 47.12.120(j)(2),

- (1) commits a subsequent felony offense;
- (2) commits a subsequent offense against a person that is a misdemeanor and involves injury to a person or the use of a deadly weapon;
- (3) fails to comply with the terms of a restitution order;
- (4) fails to engage in or satisfactorily complete a rehabilitation

1 program ordered by a court or required by a facility or juvenile probation officer; or

2 (5) escapes from a juvenile **or other** correctional facility.

3 * **Sec. 7.** AS 47.12.160 is amended by adding a new subsection to read:

4 (g) If the department has filed a delinquency petition under AS 47.12.020 and
5 47.12.040 regarding a minor who is 18 years of age or older, the court has jurisdiction
6 to adjudicate and dispose of the matter as provided in this chapter.

7 * **Sec. 8.** AS 47.14 is amended by adding a new section to read:

8 **Sec. 47.14.025. Applicability; inclusions of certain persons as minors.** The
9 provisions of AS 47.14.010 - 47.14.050 apply to a person who is 18 years of age or
10 older and who is subject to the jurisdiction of AS 47.12 due solely to AS 47.12.020(b).
11 To implement this section, the term "minor" as used in AS 47.14.010 - 47.14.050
12 includes a person described in this section.

13 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 DIRECT COURT RULE AMENDMENT. Rule 3(e), Alaska Delinquency
16 Rules, is amended to read:

17 (e) **Telephonic and Televised Participation.**

18 (1) The juvenile has the right to be physically present in court **for**
19 **arraignment, adjudication, disposition, probation revocation, extension of**
20 **jurisdiction, and waiver of jurisdiction hearings; however, the juvenile may**
21 **waive the right to be present. At all other hearings the court, upon application of**
22 **any party, may allow telephonic participation by the juvenile if the juvenile's**
23 **personal appearance is not essential to the fair disposition of the matter and**
24 **unfair to the juvenile and personal contact between counsel and the juvenile is**
25 **not needed for case preparation. The** [. HOWEVER, THE] court has discretion to
26 allow telephonic participation by other parties. The juvenile's waiver of the right to be
27 physically present may be obtained orally on the record or in writing.

28 (2) The court may allow telephonic participation of witnesses only
29 upon stipulation of the juvenile and the Department, except that the court may allow
30 telephonic participation of witnesses without the consent of the parties at disposition,
31 disposition review or temporary detention hearings.

(3) In those court locations in which a television system has been approved by the supreme court and has been installed, juveniles in custody may appear by way of television with the consent of the juvenile and with the approval of the court **for hearings in which the juvenile has a right to be physically present under (1) of this section. If the court has allowed telephonic participation by the juvenile in a hearing, participation may also be by television.** Appearance by television **or telephone** shall not be allowed at adjudication trials or at any hearings in which sworn testimony is to be presented.

* **Sec. 10.** The uncoded law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE CHANGE. The changes made by secs. 1 - 8 of this Act have the effect of amending the following Alaska Delinquency Rules by requiring the court to conform the rules to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in secs. 1 - 8 of this Act applicable to those persons:

- (1) Rule 2(n), Alaska Delinquency Rules;
- (2) Rule 3(b), Alaska Delinquency Rules;
- (3) Rule 3(c), Alaska Delinquency Rules;
- (4) Rule 4(f)(3), Alaska Delinquency Rules;
- (5) Rule 8(b), Alaska Delinquency Rules;
- (6) Rule 8(c), Alaska Delinquency Rules;
- (7) Rule 12(b), Alaska Delinquency Rules;
- (8) Rule 12(c), Alaska Delinquency Rules;
- (9) Rule 12(d), Alaska Delinquency Rules;
- (10) Rule 12(e), Alaska Delinquency Rules;
- (11) Rule 13, Alaska Delinquency Rules;
- (12) Rule 14(b), Alaska Delinquency Rules;
- (13) Rule 15(a), Alaska Delinquency Rules;
- (14) Rule 16(a), Alaska Delinquency Rules;
- (15) Rule 16(b), Alaska Delinquency Rules;
- (16) Rule 21(g), Alaska Delinquency Rules;

- (17) Rule 22(c), Alaska Delinquency Rules;
- (18) Rule 23(b), Alaska Delinquency Rules;
- (19) Rule 24.1(d), Alaska Delinquency Rules;
- (20) Rule 25(b), Alaska Delinquency Rules;
- (21) Rule 25(c)(4), Alaska Delinquency Rules.

*** Sec. 11.** The uncoded law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 1 - 8 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Section 9 of this Act applies to telephonic and televised participation for court proceedings conducted on or after the effective date of this Act, regardless of whether the offense occurred before, on, or after the effective date of this Act.

*** Sec. 12.** The uncoded law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Sections 1 - 8 of this Act take effect only if sec. 10 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 13.** The uncoded law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 9 of this Act takes effect only if sec. 9 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 14.** If, under secs. 12 and 13 of this Act, this Act takes effect, it takes effect July 1, 2005.